

IN RE: PETITIONS FOR SPECIAL HEARING AND ZONING VARIANCE - NE/cor. 52nd and Bank Streets (435 S. 52nd Street) 15th Election District 7th Councilmanic District

BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY

Case No. 88-294-SPHA

William H. Fink, Sr., et ux Petitioners

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a special hearing to approve the non-conforming use of two existing dwellings on one recorded lot, and a variance to permit a side yard setback of 0 feet in lieu of the required 10 feet, as more particularly described on Petitioner's Exhibit 1.

The Petitioners appeared and testified. Also appearing on behalf of the Petition were the Petitioners' sons, William H. Fink, Jr. and Barry L. Fink. William and Mary Patricia Woods and Barbara Skibo appeared as Protestants.

Testimony indicated that the subject property, zoned D.R. 10.5, is located at the corner of Bank Street and 52nd Street and is improved with two dwellings. The dwelling to the rear of the property is a one story brick ramblar-type dwelling and the dwelling in the front of the property is a rowhome connected to other group homes. The Petitioners testified that they purchased the property in October 1986. As a result of a complaint filed in this Office, the Petitioners received a zoning violation notice regarding the attached porch on the dwelling in the rear of the property. The porch roof extends to the sidewalk and does not meet side yard setback requirements. When the Zoning Enforcement Office inspected the property, the Petitioners were advised that in addition to requesting a variance for the porch roof, they must also establish the non-conforming use of the two dwellings on the subject property or use of the one story dwelling must cease.

April 22, 1988

Mr. & Mrs. William H. Fink, Sr.  
435 S. 52nd Street  
Baltimore, Maryland 21224

RE: Petitions for Special Hearing and Zoning Variance  
NE/cor. 52nd and Bank Streets  
15th Election District, 7th Councilmanic District  
Case No. 88-294-SPHA

Dear Mr. & Mrs. Fink:

Enclosed please find the decision rendered on the above-referenced case. The Petitions for Special Hearing and Zoning Variance have been Granted, subject to the restrictions noted in the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal to the County Board of Appeals. For further information on filing an appeal, please contact this office.

Very truly yours,

ANN M. NASTAROWICZ  
Deputy Zoning Commissioner  
of Baltimore County

AMN:bj

Enclosures

cc: Mr. & Mrs. William Woods  
7823 Bank Street, Baltimore, Md. 21224

Ms. Barbara Skibo  
7825 Bank Street, Baltimore, Md. 21224

People's Counsel

File

MAP SE/E  
4B  
E.D. 15th

WILLIAM H. FINK, Sr., et ux  
435 S. 52nd Street  
Baltimore, Maryland 21224

At the time of the hearing, the Petitioners submitted six affidavits as evidence that the one story dwelling to the rear of the property has existed since at least the date of the oldest affidavit signed in 1948. Said affidavits were marked Petitioner's Exhibit J. Subsequent to the hearing, Petitioners submitted the affidavit of Rose Caballio dated February 13, 1988 which indicates that "a ramblar and a rowhome as two" dwellings have existed at 435 52nd Street since the summer of 1939. The affidavit further states that the dwellings have been occupied by owners and renters every year since the summer of 1939.

Testimony in support of the variance request indicated that when the Petitioner's purchased the property, there existed a metal aluminum awning on the one-story dwelling. Said awning was in such poor condition that Petitioners replaced it in 1987 with the open porch and gutter system as depicted in Petitioner's Exhibit 5. Said porch and drainage system does about the sidewalk. The Petitioners testified that they need the awning to protect the windows and house from inclement weather. Mrs. Fink testified that the present porch is much safer than the original awnings which were too low and resulted in people hitting their heads on it on occasion. The Petitioners further argued that the replacement porch is much more attractive. Petitioners contend that to require strict compliance with the zoning regulations would not permit them to have some type of porch or awning protection for their home.

The Protestants testified that their concerns were with the variance requested. They argued that due to the porch being so close to the sidewalk and the gutter system overhanging onto the sidewalk, it created a slippery and dangerous condition in inclement weather for children walking to school. The Protestants indicated that if the Petitioners would maintain a minimum of a 1-foot side yard setback, the problem could be corrected. Ms. Skibo indicated that she has resided in the area since 1954 and that since that time both dwellings have existed on the property.

#### CERTIFICATE OF PUBLICATION

OFFICE OF  
**Dundalk Eagle**

4 N. Center Place  
P.O. Box 8936  
Dundalk, Md. 21222 January 14, 1988

THIS IS TO CERTIFY, that the annexed advertisement of Robert Haines in the matter of Zoning Hearings - Case #88-294-SPHA - P.O. #95524 - Reg. #M10685 - 81 lines @ \$40.50 - was inserted in **The Dundalk Eagle** a weekly newspaper published in Baltimore County, Maryland, once a week for one successive week, before the 15th day of January 1988; that is to say, the same was inserted in the issues of Jan. 14, 1988

Kimbel Publication, Inc.  
per Publisher.

#### CERTIFICATE OF PUBLICATION

TOWSON, MD., Jan. 14, 1988

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., appearing on Jan. 14, 1988

THE JEFFERSONIAN,

*Susan Bender Street*  
Publisher

NOTICE OF HEARING  
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property described below in Room 108 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland on the following date and time:  
Case number: 88-294-SPHA  
NE/cor. 52nd Street and Bank Street  
15th Election District  
7th Councilmanic District  
Petitioner: William H. Fink, et ux  
Date/Time: Friday, February 5, 1988 at 2:00 p.m.  
Variance to permit a side yard setback of 0 feet in lieu of the required 10 feet.  
Social Hearing - The establishment of a legitimate nonconforming use, two existing dwellings on a recorded lot.  
In the event that this hearing is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commission will, however, entertain any request for a stay of the enforcement of said permit during the appeal period. Such request must be in writing and received in the office by the date of the hearing set above or presented at the hearing.  
J. ROBERT HAINES  
Zoning Commissioner of Baltimore County  
1102 Jan 14

The Petitioners seek relief from Section 104.1 pursuant to Section 500.7, and from Section 1802.3C.1 pursuant to Section 307 of the Baltimore County Zoning Regulations (B.C.Z.R.).

The use described herein predates establishment of the first zoning regulations in 1945, and therefore, is clearly non-conforming inasmuch as the subject two dwellings would not be permitted as a matter of right in the D.R. 10.5 zone created by the adoption of the 1955 zoning regulations. The uncontroverted testimony indicates that the subject property has been used continuously and without interruption for two dwellings, a rowhome connected to other group homes located in the front of the property and a single-family dwelling in the rear of the property since 1939.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973).

It is clear from the testimony that if the variance was granted, as herein modified, such use as proposed would not be contrary to the spirit of the B.C.Z.R. and would not result in substantial detriment to the public good.

After due consideration of the testimony and evidence presented, it is clear that a practical difficulty or unreasonable hardship would result if a variance was not granted. It has been established that the requirements from which the Petitioner seeks relief would unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the variance granted herein will not be detrimental to the public health, safety, and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the special hearing and a variance, as hereinafter modified, should be granted with restrictions as more fully described below.

#### Property Description

Beginning on the northeast corner of 52nd Street and Banks (50 feet R/W and 24 feet paving. Being lot 7, in the subdivision of Defense Heights. Book No. 12 Folio 118. Also known as 435 S. 52nd Street in the 15th Election District.

#### CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY  
Towson, Maryland

District: 15th  
Posted for: *William H. Fink, Sr.*  
Petitioner: *William H. Fink, Sr.*  
Location of property: *435 S. 52nd St.*  
Location of Sign: *435 S. 52nd St.*  
Remarks: *See attached exhibit of deed to said property.*  
Posted by: *William H. Fink, Sr.*  
Number of Signs: *2*

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 22nd day of April, 1988 that the non-conforming use of two existing dwellings on one recorded lot, in accordance with Petitioner's Exhibit 1, and a variance to permit a side yard setback of 1 foot in lieu of the required 10 feet, be approved, and as such, the Petitions for Special Hearing and Zoning Variance are hereby GRANTED, subject, however, to the following restrictions:

- 1) The Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the applicable appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.
- 2) Petitioner shall take whatever steps are necessary to have the existing porch roof and gutter system corrected to be at least one foot from the side property line within forty (40) days of the date of this Order.
- 3) The construction of the porch, following the improvements required in Restriction No. 2 above, shall meet all Baltimore County building code and height requirements.

*Ann M. Nastarowicz*  
ANN M. NASTAROWICZ  
Deputy Zoning Commissioner  
of Baltimore County

#### PETITION FOR ZONING VARIANCE

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 1802.3C.1 to permit a side yard setback of 0 feet in lieu of the required 10 feet.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County, for the following reasons: (Indicate hardship or practical difficulty)

Note: Existing house built before zoning regulations took affect and the porch desired cannot meet current requirement.

Property is to be posted and advertised as prescribed by Zoning Regulations.  
I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

I do solemnly declare and affirm, under the penalties of perjury, that I am the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser:	Legal Owner(s):
(Type or Print Name)	<i>WILLIAM H. FINK, SR.</i>
Signature	<i>William H. Fink, Sr.</i>
Address	<i>CHARLOTTE L. FINK</i>
City and State	<i>Charlotte, N.C.</i>
Attorney for Petitioner:	435 S. 52nd Street, 285-2758
(Type or Print Name)	Address Phone No.
Signature	Baltimore, MD., 21224
City and State	City and State
Address	Name, address and phone number of legal owner, contract purchaser or representative to be contacted
City and State	<i>Mr. William H. Fink</i>
Attorney's Telephone No.:	Name 285-2758
	Address 435 S. 52nd St., Baltimore, Md.
	City and State Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 13th day of April, 1988 that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 108, County Office Building in Towson, Baltimore County, on the 5th day of April, 1988 at 2 o'clock P.M.  
*J. Robert Haines*  
Zoning Commissioner of Baltimore County.







# AFFIDAVIT

The undersigned hereby affirms under the penalties of perjury to the Zoning Commissioner of Baltimore County, as follows:

That the information herein given is within the personal knowledge of the Affiant and Affiant is competent to testify thereto in the event that a public hearing is scheduled in the future with regard thereto.

John W. Seward Sr.  
AFFIANT (Handwritten Signature)  
John W. Seward, Sr.  
AFFIANT (Printed Name)

Based upon your personal knowledge, please answer the following questions by indicating yes or no in the space provided:

1. Can you verify by this affidavit, and/or testify in Court if necessary, that the home located at 435 S. 52nd Street Rear has been occupied as a ONE (two, three, etc.) apartment dwelling since (month) 1948 (year) (answer)
2. Can you also verify and testify, if necessary, that said dwelling have been occupied by owners every year since (month) 1948 (year) (answer)
3. Will you realize any gain from the sale of this Property? No (answer)

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this 4th day of January, 1988, before me, a Notary Public of the State of Maryland, in and for the County of Baltimore, personally appeared John W. Seward Sr., the Affiant herein, personally known or satisfactorily identified to me as such Affiant, and made oath in due form of law that the matters and facts hereinabove set forth are true and correct to the best of his/her knowledge and belief.

AS WITNESS my hand and Notarial Seal.

EXHIBIT 3  
Jan. 1st 1990  
My Commission Expires: July 1, 1990

# AFFIDAVIT

The undersigned hereby affirms under the penalties of perjury to the Zoning Commissioner of Baltimore County, as follows:

That the information herein given is within the personal knowledge of the Affiant and Affiant is competent to testify thereto in the event that a public hearing is scheduled in the future with regard thereto.

Elizabeth Kreller  
AFFIANT (Handwritten Signature)  
ELIZABETH KRELLER  
AFFIANT (Printed Name)

Based upon your personal knowledge, please answer the following questions by indicating yes or no in the space provided:

1. Can you verify by this affidavit, and/or testify in Court if necessary, that the home located at 435 S. 52nd St. Rear has been occupied as a ONE (two, three, etc.) apartment dwelling since (month) 1950 (year) (answer)
2. Can you also verify and testify, if necessary, that said dwelling have been occupied by owners every year since (month) 1950 (year) (answer)
3. Will you realize any gain from the sale of this Property? No (answer)

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this 4th day of January, 1988, before me, a Notary Public of the State of Maryland, in and for the County of Baltimore, personally appeared Elizabeth Kreller, the Affiant herein, personally known or satisfactorily identified to me as such Affiant, and made oath in due form of law that the matters and facts hereinabove set forth are true and correct to the best of his/her knowledge and belief.

AS WITNESS my hand and Notarial Seal.

Jan. 1st 1990  
My Commission Expires: July 1, 1990

# AFFIDAVIT

The undersigned hereby affirms under the penalties of perjury to the Zoning Commissioner of Baltimore County, as follows:

That the information herein given is within the personal knowledge of the Affiant and Affiant is competent to testify thereto in the event that a public hearing is scheduled in the future with regard thereto.

Shirley Liden  
AFFIANT (Handwritten Signature)  
SHIRLEY LIDEN  
AFFIANT (Printed Name)

Based upon your personal knowledge, please answer the following questions by indicating yes or no in the space provided:

1. Can you verify by this affidavit, and/or testify in Court if necessary, that the home located at 435 S. 52nd St. Rear has been occupied as a ONE (two, three, etc.) apartment dwelling since (month) 1950 (year) (answer)
2. Can you also verify and testify, if necessary, that said dwelling have been occupied by owners every year since (month) 1950 (year) (answer)
3. Will you realize any gain from the sale of this Property? No (answer)

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this 4th day of January, 1988, before me, a Notary Public of the State of Maryland, in and for the County of Baltimore, personally appeared Shirley Liden, the Affiant herein, personally known or satisfactorily identified to me as such Affiant, and made oath in due form of law that the matters and facts hereinabove set forth are true and correct to the best of his/her knowledge and belief.

AS WITNESS my hand and Notarial Seal.

Jan. 1st 1990  
My Commission Expires: July 1, 1990

# AFFIDAVIT

The undersigned hereby affirms under the penalties of perjury to the Zoning Commissioner of Baltimore County, as follows:

That the information herein given is within the personal knowledge of the Affiant and Affiant is competent to testify thereto in the event that a public hearing is scheduled in the future with regard thereto.

Samuel T. Gibson  
AFFIANT (Handwritten Signature)  
SAMUEL T. GIBSON  
AFFIANT (Printed Name)

Based upon your personal knowledge, please answer the following questions by indicating yes or no in the space provided:

1. Can you verify by this affidavit, and/or testify in Court if necessary, that the home located at 435 S. 52nd Street Rear (Ludie's Beach) has been occupied as a ONE (two, three, etc.) apartment dwelling since (month) NOV-11-1954 (year) (answer)
2. Can you also verify and testify, if necessary, that said dwelling have been occupied by owners every year since (month) NOV-1954 (year) (answer)
3. Will you realize any gain from the sale of this Property? No (answer)

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this 4th day of January, 1988, before me, a Notary Public of the State of Maryland, in and for the County of Baltimore, personally appeared Samuel T. Gibson, the Affiant herein, personally known or satisfactorily identified to me as such Affiant, and made oath in due form of law that the matters and facts hereinabove set forth are true and correct to the best of his/her knowledge and belief.

AS WITNESS my hand and Notarial Seal.

Jan. 1st 1990  
My Commission Expires: July 1, 1990

# AFFIDAVIT

The undersigned hereby affirms under the penalties of perjury to the Zoning Commissioner of Baltimore County, as follows:

That the information herein given is within the personal knowledge of the Affiant and Affiant is competent to testify thereto in the event that a public hearing is scheduled in the future with regard thereto.

Gertrude P. Gibson  
AFFIANT (Handwritten Signature)  
Gertrude P. Gibson  
AFFIANT (Printed Name)

Based upon your personal knowledge, please answer the following questions by indicating yes or no in the space provided:

1. Can you verify by this affidavit, and/or testify in Court if necessary, that the home located at 435 S. 52nd St. Rear has been occupied as a ONE (two, three, etc.) apartment dwelling since (month) NOV-11-1954 (year) (answer)
2. Can you also verify and testify, if necessary, that said dwelling have been occupied by owners every year since (month) NOV-11-1954 (year) (answer)
3. Will you realize any gain from the sale of this Property? No (answer)

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this 4th day of January, 1988, before me, a Notary Public of the State of Maryland, in and for the County of Baltimore, personally appeared Gertrude P. Gibson, the Affiant herein, personally known or satisfactorily identified to me as such Affiant, and made oath in due form of law that the matters and facts hereinabove set forth are true and correct to the best of his/her knowledge and belief.

AS WITNESS my hand and Notarial Seal.

Jan. 1st 1990  
My Commission Expires: July 1, 1990

# AFFIDAVIT

The undersigned hereby affirms under the penalties of perjury to the Zoning Commissioner of Baltimore County, as follows:

That the information herein given is within the personal knowledge of the Affiant and Affiant is competent to testify thereto in the event that a public hearing is scheduled in the future with regard thereto.

Louis H. Salgado  
AFFIANT (Handwritten Signature)  
LOUIS H. SALGADO  
AFFIANT (Printed Name)

Based upon your personal knowledge, please answer the following questions by indicating yes or no in the space provided:

1. Can you verify by this affidavit, and/or testify in Court if necessary, that the home located at 435 S. 52nd St. Rear has been occupied as a ONE (two, three, etc.) apartment dwelling since (month) 1955 (year) (answer)
2. Can you also verify and testify, if necessary, that said dwelling have been occupied by owners every year since (month) 1955 (year) (answer)
3. Will you realize any gain from the sale of this Property? No (answer)

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this 4th day of January, 1988, before me, a Notary Public of the State of Maryland, in and for the County of Baltimore, personally appeared Louis H. Salgado, the Affiant herein, personally known or satisfactorily identified to me as such Affiant, and made oath in due form of law that the matters and facts hereinabove set forth are true and correct to the best of his/her knowledge and belief.

AS WITNESS my hand and Notarial Seal.

Jan. 1st 1990  
My Commission Expires: July 1, 1990

# AFFIDAVIT

The undersigned hereby affirms under the penalties of perjury to the Zoning Commissioner of Baltimore County, as follows:

That the information herein given is within the personal knowledge of the Affiant and Affiant is competent to testify thereto in the event that a public hearing is scheduled in the future with regard thereto.

Bobie Cavallio  
AFFIANT (Handwritten Signature)  
BOBIE CAVALLIO  
AFFIANT (Printed Name)

Based upon your personal knowledge, please answer the following questions by indicating yes or no in the space provided:

1. Can you verify by this affidavit, and/or testify in Court if necessary, that the 2 homes located at 435 Fifty Second Street, Baltimore, Maryland 21224 has been occupied as a single and a row home as two (two, three, etc.) dwelling since (month) 1954 (year) (answer)
2. Can you also verify and testify, if necessary, that said 2 dwellings have been occupied by owners every year since (month) 1954 (year) (answer)
3. Will you realize any gain from the sale of this Property? No (answer)
4. Relationship Sister-in-law (answer)

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this 1st day of February, 1988, before me, a Notary Public of the State of Maryland, in and for the County of Baltimore, personally appeared Bobie Cavallio, the Affiant herein, personally known or satisfactorily identified to me as such Affiant, and made oath in due form of law that the matters and facts hereinabove set forth are true and correct to the best of his/her knowledge and belief.

AS WITNESS my hand and Notarial Seal.

Jan. 1st 1990  
My Commission Expires: 1990

# BALTIMORE COUNTY, MARYLAND

## INTER-OFFICE CORRESPONDENCE

Mr. J. Robert Haines  
TO: Zoning Commissioner Date: December 16, 1987

Norman E. Gerber, AICP  
FROM: Director of Planning and Zoning

Zoning Petition Nos. 88-285-A, 88-286-A,  
SUBJECT: 88-287-A, 88-288-A, 88-289-A, 88-290-A

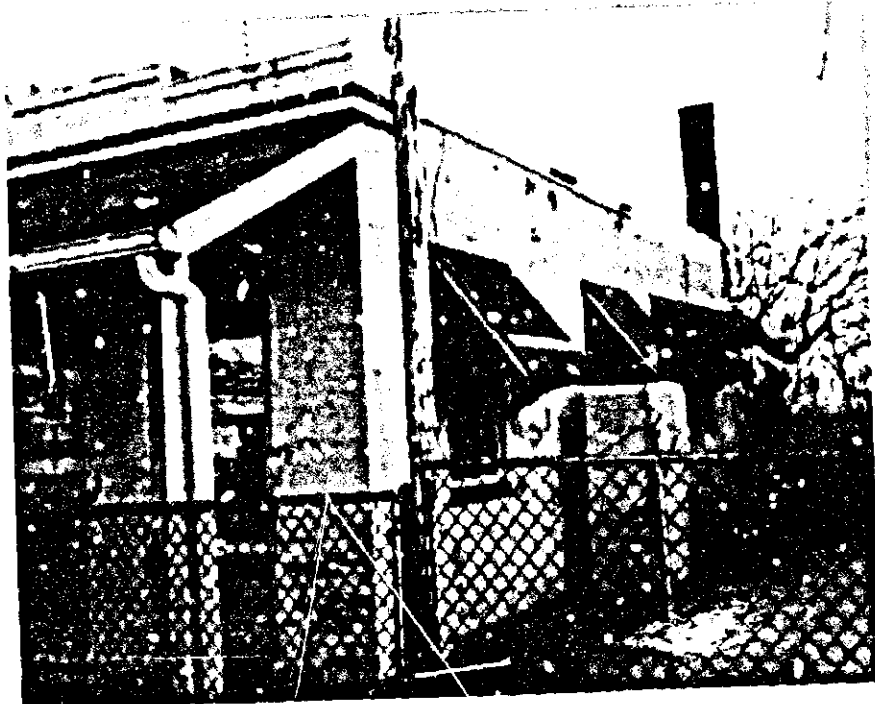
There are no comprehensive planning factors requiring comment on this petition.

Norman E. Gerber per J. Haines  
Norman E. Gerber, AICP  
Director

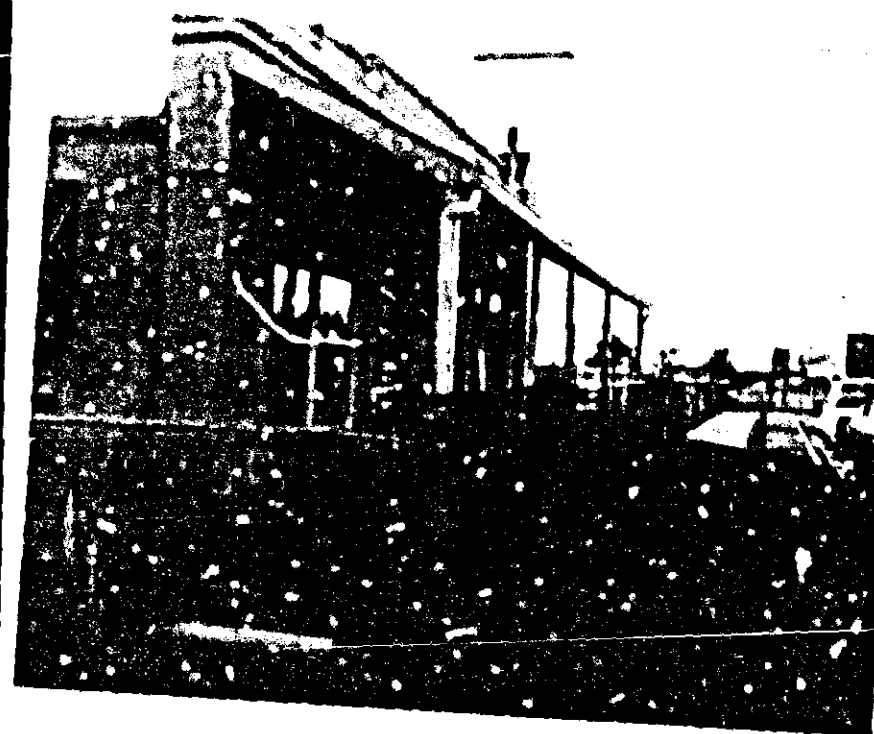
REG:JCH:dee

cc: Ms. Shirley M. Hess, Legal Assistant, People's Counsel  
File





PETITIONER'S  
EXHIBIT 5



PETITIONER'S  
EXHIBIT

# BALTIMORE COUNTY, MARYLAND

## INTER-OFFICE CORRESPONDENCE

TO: James Dyer  
Zoning Supervisor  
Date: 10-21-82

FROM: James Thompson  
Zoning Enforcement Coordinator

Item No.: 138 (if known)  
SUBJECT: Petitioners: Fick (if known)

VIOLATION CASE # 88-502  
LOCATION OF VIOLATION Non-Conforming Use & Variance  
DEFENDANT William H. Charlotte Fick ADDRESS 435/52ND ST.  
21224

Please be advised that the aforementioned petition is the subject of an active violation case. When the petition is scheduled for a public hearing, please notify the following persons:

NAME	Pat Woods	ADDRESS
		7823 Bank St
	Phone # 288-2170	Guth, Md 21224

After the public hearing is held, please send a copy of the Zoning Commissioner's Order to the Zoning Enforcement Coordinator, so that the appropriate action may be taken relative to the violation case.

